Appellate Court may take further evidence or direct it to be taken.

428. (*1*) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

Appellate Court may take further evidence or direct it to be taken.

428. (*1*) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken [1][*by a Judicial Magistrate*] or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(*2*) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(*3*) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors [2]* *.

(*4*) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were an inquiry.

Procedure where Judges of Court of Appeal are equally divided.

429. When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit shall deliver his opinion, and the judgment or order shall follow such opinion.

Finality of orders on appeal.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

Abatement of appeals.

431. Every appeal under [3][section 411A, sub-section (*2*), or section 417] shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

CHAPTER XXXII.

Of Reference and Revision.

Reference to High Court.

[4][**432.** (*1*) Where any court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that court is subordinate or by the Supreme Court, the court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

Explanation.—In this section, "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, or in the General Clauses Act of a State.

(*2*) A presidency magistrate may, if he thinks fit in any case pending before him to which the provisions of sub-section (*1*) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

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[1] Substituted by Bom. 23 of 1951, s. 2 and Sch. Pt. I, for "by a Magistrate".
[2] The words "or assessors" by Act 26 of 1955, s. 87.
[3] Substituted by the Criminal Procedure Amendment Act, 1943 (26 of 1943), s. 5, for "section 417".
[4] Substituted by Act 24 of 1951, s. 3, for the original s. 432.

(*3*) Any court making a reference to the High Court under sub-section (*1*) or sub-section (*2*) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon.]

Disposal of case according to decision of High Court.

433. (*1*) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Direction as to costs

(*2*) The High Court may direct by whom the costs of such reference shall be paid.

434. [*Power to reserve questions arising in original jurisdiction of High Court. Procedure when question reserved.*] *Rep. by the Criminal Procedure Amendment Act, 1943 (XXVI of 1943), s. 6.*

Power to call for records of inferior Courts.

435. (*1*) The High Court or any Sessions Judge or District Magistrate, or any Sub-divisional Magistrate empowered by the State Government in this behalf may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 437.

Power to call for records of inferior Courts.

435. (*1*) The High Court or any Sessions Judge [1][*other than the Sessions Judge of the Court of Session for Greater Bombay*], [2]* * may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court, [3][and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

[4]* * * * *

[5][(*2*) *The District Magistrate or any Sub-divisional Magistrate empowered by the State Government in this behalf, may call for and examine the record of any proceedings before any Subordinate Executive Magistrate for the*

[1] Inserted by Bom. 32 of 1948, s. 22.
[2] The words "or District Magistrate, or any Sub-divisional Magistrate empowered by the State Government in this behalf" were deleted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.
[3] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 116.
[4] The Explanation was deleted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.
[5] Substituted, *ibid.*, for the original sub-sections (*2*) and (*4*).

(*2*) If any Sub-divisional Magistrate acting under sub-section (*1*) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(*3*) *Rep. by Act 18 of 1923, s. 116.*

(*4*) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.

purpose of satisfying himself as to the correctness, legality or propriety of any order recorded or passed and as to the regularity of any proceedings of such Subordinate Magistrate and may, when calling for such record, direct that the execution of any order be suspended and if the person is in confinement that he be released on bail on his own bond pending the examination of the record.

(3) If any Sub-divisional Magistrate acting under sub-section (2) considers that any such proceeding or order is illegal or improper he shall forward the record with such remarks thereon as he thinks fit to the District Magistrate.

[1][*(4) The High Court may call for and examine the record of any proceeding in respect of an order made under section 118,122,143, 144, or 145, notwithstanding the fact that such proceeding was before an Executive Magistrate or the commissioner of Police as the case may be.*]

Power to order inquiry.

436. On examining any record under section 435 or otherwise, the High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Magistrates subordinate to him, to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make further inquiry into any complaint which has been dismissed under section 203 or sub-section (*3*) of section 204, or into

Power to order inquiry.

[2][**436.** [3][(*1*)] On examining any record under section 435 or otherwise, the High Court or the Sessions Judge [4][*other than the sessions Judge of the Court of session for Greater Bombay*] may direct [5][*the Judicial Magistrate to make*] further inquiry into any complaint which has been dismissed under section 203 or sub-section (*3*) of section 204, or into the case of any [6][person accused of an offence] who has been discharged:

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[1] Sub-section (*4*) was substituted for the original by Bom. 39 of 1955, s. 6.

[2] This section, originally numbered 437, was renumbered 436 by Act 18 of 1923, s. 117.

[3] Section 436 was renumbered as sub-section (*1*) of that section by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

[4] Inserted by Bom. 32 of 1948, s. 23.

[5] Substituted by Bom. 23 of 1951, s. 2 and Sch. Pt. I, for "the District Magistrate by himself or by any of the Magistrates subordinate to him, to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make".

[6] Substituted for "accused person" by Act 18 of 1923, s. 117.

the case of any person accused of an offence who has been discharged :

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

[1][Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.]

[2][(2) *On examining any record under section 435 or otherwise, the District Magistrate may direct any Sub-Divisional Magistrate or any other Executive Magistrate subordinate to him to make, and the Sub-divisional Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any proceedings* [3][*in which an order of release or discharge has been made under section 119*] :

Provided that no District Magistrate shall make any direction under this section for further inquiry into the case of any person unless such person has haa an opportunity of showing cause why such direction should not be made.]

437. When, on examining the record of any case under section 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of Session and that an accused person has been improperly discharged by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested, and may thereupon instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Sessions Judge or District Magistrate improperly discharged : Power to order commitment.

[4][**437.** When, on examining the record of any case under section 435 or otherwise, the Sessions Judge [5][*other than the Sessions Judge of the Court of Session for Greater Bombay*] [6]* * * considers that such case is triable exclusively by the Court of Session and that an accused person has been improperly discharged by the inferior Court, the Sessions Judge [6]* * * may cause him to be arrested, and may thereupon instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Power to order commitment.

[1] Inserted by Act 18 of 1923, s. 117.
[2] Added by Bom. 23 of 1951, s. 2 and Sch. Pt. I.
[3] These words were inserted by Bom. 39 of 1955, s. 7.
[4] This section, originally numbered 436, was renumbered 437 by Act 18 of 1923, s. 117.
[5] Inserted by Bom. 32 of 1948, ss. 24 and 25.
[6] The words "or District Magistrate" were deleted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

Provided as follows :—

(*a*) that the accused has had an opportunity of showing cause to such Judge or Magistrate why the commitment should not be made ;

(*b*) that, if such Judge or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Judge or Magistrate may direct the inferior Court to inquire into such offence.

Sessions Judge [1]* * * improperly discharged :

Provided as follows :—

(*a*) that the accused has had an opportunity of showing cause to such Judge [2]* * why the commitment should not be made ;

(*b*) that, if such Judge [2]* * thinks that the evidence shows that some other offence has been committed by the accused, such Judge [2]* * may direct the inferior Court to inquire into such offence.

Report to High Court.

438. (*1*) The Sessions Judge or District Magistrate may, if he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the result of such examination and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond.

Report to High Court.

438. (*1*) The Sessions Judge [3][*other than the Sessions Judge of the Court of Session for Greater Bombay*] [1]* * * * may, if he thinks fit, on examining under section 435 or otherwise the record of any proceeding report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond.

(*2*) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him [4][by or under any general or special order of the Sessions Judge].

Power of District Magistrate to report to High Court or decide finally proceedings called for.

[5][**438A.** On examining under section 435 or otherwise the record of any proceedings,—

(*1*) if such proceeding is in respect of an order made under section 118, 122, 143, 144 or 145 and the District Magistrate thinks that the order made in such proceeding should be reversed or altered, he shall report for the orders of the High Court the result of such examination ;

(*2*) if such proceeding is in respect of an order made under any other section, then in the case of such proceeding the District Magistrate may, subject to the provisions of sub-section (*2*) of section 436, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428.]

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[1] The words "or District Magistrate" were deleted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

[2] The words "or Magistrate" were deleted, *ibid.*

[3] Inserted by Bom. 32 of 1948, ss. 24 and 25.

[4] Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 118, for "by the Sessions Judge".

[5] This section was inserted by Bom. 39 of 1955, s. 8.

High Court's powers of revision.

439. (*1*) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections [1]* 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

(*2*) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(*3*) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

(*4*) Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(*5*) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

[2][(*6*) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (*2*) of showing cause why his sentence should not be enhanced shall, in showing cause be entitled also to show cause against his conviction.]

Optional with Court to hear parties.

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision:

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, sub-section (*2*).

Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.

High Court's order to be certified to lower Court or Magistrate.

442. When a case is revised under this Chapter by the High Court, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary the record shall be amended in accordance therewith.

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[1] The figures "195" rep. by Act 18 of 1923, s. 119.

[2] Inserted, *ibid.*, s. 119.